

Title: The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 SI No: 2020/646 Other departments or agencies: N/A Contact for enquiries: Jenny Chaplin	De minimis assessment
	Date: 25/02/2020
	Type of regulation: Domestic
	Date measure comes into force: 01/06/2020 (estimated date for the SI being made; however, some measures will not come into force until the end of the Transition Period)
Cost of Preferred (or more likely) Option £0	Net cost to business per year (EANDCB in 2016 prices) £0

1. What is the problem under consideration? Why is government intervention necessary? (Maximum 5 lines)

The update to European Market Infrastructure Regulation (EMIR 2.2) entered into application in the EU on 1 January 2020. It establishes a new recognition regime for third country CCPs by implementing a tiering system, and introduces a dedicated regime for the third country CCPs which are, or likely to become, systemically important for the financial stability of the EU or of one or more of its Member States. These are referred to as Tier 2 CCPs. Tier 2 CCPs will need to comply with the requirements under EMIR in order to be recognised, and the European Securities and Markets Authority (ESMA) will have ongoing supervisory responsibility for Tier 2 CCPs.

ESMA can also recommend to the Commission that a third country CCP which is ‘substantially systemically important’ for the financial stability of the EU cannot offer some services to EU clearing members unless those services are offered from inside the EU. This could see the European Commission refusing recognition unless the third country CCP relocates inside the EU.

EMIR 2.2. will become part of retained EU law at the end of the Transition Period. This instrument is a necessary government intervention to address deficiencies in EMIR, as amended by EMIR 2.2. This SI will ensure a coherent and functioning financial services regulatory regime in the UK at the end of the Transition Period.

2. What are the policy objectives and the intended effects?

This instrument addresses deficiencies in retained EU law in the European Market Infrastructure Regulation (EU) No. 648/2012 (known as “EMIR”), as amended by Regulation (EU) No. 2019/2099 (known as “EMIR 2.2” or “EMIR supervision”). The SI will be laid under the EU Withdrawal Agreement 2018 (EUWA), as amended by the European Union (Withdrawal Agreement) Act 2020.

In particular, this SI will transfer the new functions in EMIR 2.2 from EU to UK authorities, in order to ensure the EMIR 2.2 is a functional framework for UK authorities to make market access decision for third country CCPs.

3. What policy options have been considered, including any alternatives to regulation?

Please justify preferred option (Maximum 5 lines)

This SI is not intended to make policy changes, other than to reflect the UK's new position outside the EU, and to smooth the transition.

The alternative option is to do nothing, meaning parts of the UK's regulatory framework relating to third country CCP supervision would become less effective or legally inoperable at the end of the Transition Period. In particular, the Bank of England would not be able to carry out some of its responsibilities, including the recognition of new UK CCPs. Without an operable regime in place for third country CCP supervision, the UK's ability to regulate the financial sector effectively would be compromised, affecting market confidence and creating instability. This would potentially leave the UK more vulnerable to significant financial stability risk.

4. Please justify why the net impacts (i.e. net costs or benefits) to business will be less than £5 million a year.

This SI updates the existing UK EMIR and sits alongside the four instruments that were laid before Parliament in 2018 and 2019 to fix deficiencies in the existing framework.¹ The impact assessments conducted for these instruments were all de minimis, with estimated costs of less than £5 million for UK firms.²

These changes do not impose any additional requirements or administrative burdens on UK business. This is because the changes introduced by this SI update the third country supervisory framework and will therefore only impact CCPs which are established in third countries.

There could potentially be some impact on the Bank of England, as the Bank will be required to conduct tiering assessments for third country CCPs, and to take on supervisory responsibility for the most systemic third country CCPs. However, this is consistent with the Bank's existing responsibility for the supervision of UK CCPs, and responsibility for recognising third country CCPs has already been assigned to the Bank in a previous onshoring SI.

The Bank of England has already been assigned the ability to levy fees on third country CCPs to fund the new responsibilities arising from the Bank's new responsibilities for third country CCPs. As such, the Bank has a mechanism to recover costs from third country firms if appropriate. While there are a small number of minor changes in EMIR 2.2 which could impact UK CCPs, those changes are introduced in the underlying EU regulation, not this SI.

The net impacts for UK business as a result of this SI will therefore be zero.

¹ The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018; Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018; Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018; and the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019

² Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 Impact Assessment:

https://www.legislation.gov.uk/ukia/2019/28/pdfs/ukia_20190028_en.pdf

Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 Impact Assessment: http://www.legislation.gov.uk/ukia/2018/134/pdfs/ukia_20180134_en.pdf

Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 Impact Assessment: https://www.legislation.gov.uk/ukia/2018/158/pdfs/ukia_20180158_en.pdf

Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 Impact Assessment:

https://www.legislation.gov.uk/ukia/2019/28/pdfs/ukia_20190028_en.pdf

5. Please confirm whether your measure could be subject to call-in by BRE under the following criteria. If yes, please provide a justification of why a full impact assessment is not appropriate:

- a) Significant distributional impacts (such as significant transfers between different businesses or sectors)
No
- b) Disproportionate burdens on small businesses
No
- c) Significant gross effects despite small net impacts
No
- d) Significant wider social, environmental, financial or economic impacts
No
- e) Significant novel or contentious elements
No

Sign-off for de minimis assessment: SCS

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

SCS of Securities, Markets, and Banking

Signed: **Tom Duggan** Date: 11/03/2020

SCS of Better Regulation Unit

Signed: **Johanna Cowan** Date: 12/03/2020

Sign-off for de minimis assessment: Minister

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: **John Glen**

Date: 19/03/2020

Further information sheet

Please provide additional evidence in subsequent sheets, as required.